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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 525 of 1987

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|-------------------------|------|--------------|
| Sumant Lal Meena        | .... | Applicant.   |
| Versus                  |      |              |
| Union of India & others | .... | Respondents. |

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Hon'ble Justice A. Banerji, Chairman (J).  
Hon'ble A. Johri, Member (A).

(Delivered by Hon. A. Johri, A.M.)

In this application, which has been received by transfer from the Principal Bench at Delhi of this Tribunal and which was filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as a Fitter-cum-Generator Driver (FGD), Grade II, on the North-Eastern Railway at Kanshipur, has challenged the order dated 17.2.1987 passed by the Divisional Railway Manager (DRM), Izatnagar, reverting the applicant from the post of Fitter-cum-Driver (FD), Grade II to the post of Khallasi.

2. The facts of the case, which are not under dispute, <sup>or</sup> ~~is~~ <sup>are</sup> that the applicant, who was appointed as a Khallasi on 25.5.1982 got promoted as a FD, Gr.III after due trade-test on 29.3.1985 and was further promoted after passing another trade test as a FD, Gr.II with effect from a retrospective date, i.e. 1.1.1984 vide DRM(P)'s letter of 12.6.1986 and while the applicant was working as FD, Gr.II he received the impugned order reverting him to the post of Khallasi.

3. The applicant has challenged these reversion orders on the grounds that he was not given any opportunity of being heard before he was reverted and that he had already worked for nearly two years on the post of FD and as such he could not be reverted from the post, which he occupied after due trade test, and when his work had been found satisfactory.



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4. In their reply the respondents have said that on receipt of representation from one of the senior Khallasis, who had been ignored for promotion to the post of FD, Gr.III, the matter was investigated and it was found that the promotion of the applicant was incorrectly made and he had been erroneously called for the trade test for promotion to Gr.III and thereafter for promotion to Gr.II. Therefore, neither the promotion to Gr.III ordered on 27.3.1985 nor the second promotion ordered on 12.6.1986 to Gr.II <sup>31</sup> should <sup>be 31</sup> sustain-able. The decision in regard to wrong promotion of the applicant was taken on 17.2.1987 when it was found that he was not eligible for these promotions on the basis of his seniority. There was only one post of FD, Gr.III reserved for STs and applications were invited from ST candidates. According to the respondents, the applicant was found to be 4th in the seniority list. The other seniors were, by mistake, not called for the trade test and, therefore, on detection of this mistake, it was found that the promotion given to the applicant, ignoring his seniors, was incorrect and the same being ab initio wrong, the position was corrected by promotion of the senior suitable person and reverting the applicant, who was not eligible on account <sup>of his lower</sup> of his seniority.

5. We have heard the learned counsel for the parties. The main emphasis in the submissions made by the learned counsel for the applicant was that the applicant having worked in the higher grade, after qualifying in a trade test, for more than 18 months could not be reverted without following D&A Procedure. While, the learned counsel for the respondents opposed this submission on the ground that since the appointment was found to be ab initio void the orders reverting the applicant to his correct position cannot be treated as violation of Article 311(2) of the Constitution. The learned counsel further contended that in any case the applicant has not officiated for 18 months in any of the grades and, therefore, he could not seek <sup>31</sup> protection of the 18 months' officiating rule. Nothing

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else was pressed before us. We have perused the case file and the relevant papers.

6. The respondents have placed a copy of the panel of Khallasis under which the applicant was recruited on 21.5.1982. The applicant is shown as occupying No.56 on the panel of the candidates selected, while the seniors, who were ignored for their promotion to the post of FD, Gr.III, occupying the position in the panel at Sl.Nos. 29, 42 and 55. This being the basic seniority of the Khallasis, who were recruited from ST candidates to make up the short-falls, there is no doubt about the fact that the applicant was the junior-most amongst the four, who had applied for the post of FD, Gr.III, <sup>31/ but</sup> ~~while~~ the senior persons were not called, the applicant was called for the trade test. It is understood that for trade test only one person is called against one vacancy and when the seniors found that they have been ignored, they made the representation which after investigations resulted in the impugned order setting the position right and reverting the applicant from the post of FD, Gr.III which got re-structured to Gr.II to his substantive post of Khallasi. Thus the orders reverting the applicant have been issued on account of detection of an error in the original promotions that were ordered by the respondents. It has been submitted before us that this reversion order is bad because the applicant has not been given adequate opportunity to show-cause against this order before he was actually reverted and that the applicant had come to possess a right to continue on the post as he had been regularly selected.

7. In Ashit Sengupta and others v. Union of India and others (1987 (4) ATC 109) the Calcutta Bench of this Tribunal had held that when an appointment is sought on the basis of a fake letter from Employment Exchange such an appointment is void ab initio and an order terminating such engagement on the ground that name has not been properly forwarded was non-stigmatic and could be made even without affording opportunity.

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8. Similarly, in Sanjiv Kumar Aggarwal and others v. Union of India and others (1987 (3) ATC 990) the Principal Bench of this Tribunal had held that where termination was ordered due to the reasons that an employment was secured by dishonest means or appointment was done by mistake and the public servant was not qualified for appointment a plain order of termination without detailed enquiry is valid and it does not violate Article 311(2) of the Constitution.

9. The facts and circumstances in the applicant's case clearly bring out that the applicant was not the senior-most person and he could not be promoted in the normal course and that the promotion was made erroneously by ignoring his seniors and this situation naturally is an 'accident of service', the promotion was ab initio wrong.

10. In K.H. Phadnis v. State of Maharashtra (AIR 1971 SC 998) the Hon'ble Supreme Court had observed that an order of reversion simpliciter will not amount to a reduction in rank or a punishment and that a Government servant can be sent to his substantive post in ordinary routine administration. The Hon'ble Supreme Court had gone on to observe that the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine 'accident of service', where there is no aspersion cast against the character or integrity or where it is not by way of punishment.

11. In the applicant's case it is clear that it is a pure case of 'accident of service' where his seniors were ignored and when they represented the error was detected and the mistake<sup>was</sup> rectified. As far as protection under the 18 months' officiating rule is concerned, since the promotion was initially wrong, the protection available under this rule cannot be invoked because the applicant is not being reverted on account of any aspersion cast on him or on account of his inefficiency, but the reversion order is based on a wrong seniority having been given to the applicant<sup>and promotion</sup> for which<sup>he</sup> he

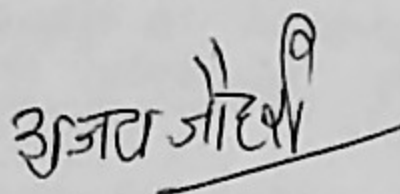
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was not eligible. We are, therefore, not in agreement with the submission made by the learned counsel for the applicant that the reversion order was in any way a punitive order because it was only an order which was issued to correct the mistake. The applicant was in any case not due this promotion and he cannot say that for the period that he was made to work as FD he was not paid the salary of the post.

12. In the above view, we do not find any merit in this application and we dismiss it with costs on parties.

  
MEMBER (A).

  
CHAIRMAN (J).

Dated: December 23<sup>rd</sup>, 1988.

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